

DP-302911

REMARKS

As discussed with Examiner Chaney, it is contended that the Restriction Requirement is not proper and places an undue and unfair burden and expense on the Applicant. The claims of the present application were originally filed in February 2001 with the original application. The only amendment to the present application was the cancellation of two (2) claims. All the remaining claims have been prosecuted through a final rejection, have been appealed, and an Appeal Brief has been filed. After filing of the Appeal Brief, the prosecution was reopened to issue a Restriction Requirement. The Restriction Requirement states that claims are now considered to have diverging subject matter that renders restriction proper. However, considering that the claims have been previously searched by the Examiner, have been the subject a final rejection and have been appealed, the Restriction Requirement is not proper. Pursuant to MPEP 811 and 37 CFR §1.142(a), "requirement will be made before any action upon the merits; however, may be made at any time *before* final action." Considering that a final rejection has been received and responded to, and considering that a Notice of Appeal and an appeal brief have been filed in this case, the Requirement for Restriction is not proper. Even though prosecution can be *reopened* in the case, actions on the merits, including a final rejection, have been received, and no new claims were added. Reconsideration and withdrawal of the Restriction are respectfully requested.

With respect to timely filing a response to the Restriction Requirement, sent herewith is a copy of the original Response to the Restriction Requirement. As can be see from the certificate of mailing, a Response to the Restriction Requirement was timely filed on November 12, 2003. It is also noted that the original Response was filed with traverse, which is consistent with this Supplemental Response.

In accordance with 37 CFR §1.143, and as stated in the original Response, the claims of Group I, i.e., Claims 1 – 28 and 31 – 42, have been elected with traverse. This election is being made with traverse, and without prejudice to Applicants' rights with respect to Claims 43 – 56, Groups II and III, including the right to file divisional application(s) thereon.

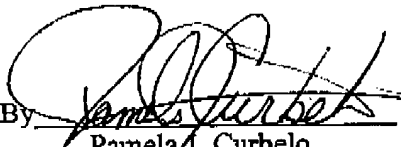
In the event the Examiner has any queries regarding the instantly submitted Supplemental Response, the undersigned respectfully requests the courtesy of a telephone conference to discuss any matters in need of attention.

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Considering that a response to the Restriction Requirement was timely submitted, there should be no charge with respect to this Supplemental Response. However, if there are any additional charges or fees with respect to this matter or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully Submitted,

CANTOR COLBURN LLP

By 
Pamela J. Curbelo
Registration No. 34,676

Date: August 26, 2004
55 Griffin Road South
Bloomfield, CT 06002
Telephone: (860) 286-2929
Facsimile: (860) 286-0115